Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
Forward-Looking Mechanism for High Cost Support for Non-Rural LECs	)	CC Docket No. 97-160
	)	

COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY, PACIFIC BELL, AND NEVADA BELL ON ALTERNATIVE METHODOLOGIES

Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell (collectively, the "SBC LECs") provide these Comments to the Public Notice, DA 98-715, on alternative methods of determining universal service high-cost support. By filing these Comments, none of the SBC LECs or any affiliate waives, prejudices, or otherwise adversely affects any appeal or other recourse from any Commission or State proceeding or action, including the Universal Service Order.[1]

This proceeding has been instituted to address dissatisfaction with the methodology adopted in the Universal Service Order. That dissatisfaction, expressed by Congressional leaders, State commissions, and rural and non-rural incumbent local exchange carriers ("LECs"), arises from the conclusion that the Universal Service Order will not "preserve and advance" universal service, but will instead provide insufficient support for rural and other high-cost areas. Increased local rates and

[1] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 12 FCC Rcd 8776 ("Universal Service Order").

a lowered quality of service for those who Congress sought to protect can only follow. The Commission needs to avoid these consequences by acting quickly to modify its earlier order and to fulfill its statutory mandate.

The Commission Needs to Return to the Congressional Structure For Universal Service Support

In enacting 47 U.S.C. § 254, Congress envisioned a three-step process that would occur over fifteen (15) months in conjunction with a Federal-State Joint Board. First, a definition of universal service would be adopted. Second, the implicit subsidies supporting universal service as so defined would be identified. Finally, those implicit subsidies would be replaced with explicit support mechanisms that were "specific, predictable, and sufficient" and which were funded in an "equitable and nondiscriminatory" manner.

Twenty-seven months later, the FCC has only fulfilled that first step. The implicit subsidies that exist within incumbent LECs' rates have not been identified, mechanisms to make that support explicit (much less "specific, predictable, and sufficient") have not been adopted or implemented, and high-cost support has not been made available to any greater extent than before the 1996 Act. The result has been a federal universal service program that fulfills none of the Congressional objectives, and has apparently resulted only in increased rates to consumers.

Although the Public Notice might appear to be an attempt to get back on track,[2] the SBC

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[2] There are other efforts underway to improve the Commission's implementation of section 254, as well as to conform that implementation to the section's requirements. *See, e.g., Report to Congress in Response to Senate Bill 1768 and Conference Report on H.R. 3579*, issued by the FCC on May 8, 1998.

LECs believe that the FCC is only setting off on another path that deviates from the Congressional direction. Based upon the focus of the Public Notice, the FCC apparently fails to acknowledge or even recognize the root cause of the problem -- the failure to perform the second step, identifying the implicit subsidies.

That identification can only be performed using the actual, booked costs of incumbent LECs. The FCC is attempting (with difficulty) to finalize a forward-looking cost proxy model to resize support. The Commission plans to use the model to determine the theoretical cost of providing universal service within the operating areas of non-rural incumbent LECs.[3] This approach totally ignores the undeniable fact that no resizing is required by the 1996 Act. The Act just requires making current implicit support explicit, and the implicit subsidies currently supporting universal service are based upon the actual, booked costs of those LECs. Correspondingly, the only way to identify the implicit subsidies is with those actual, booked costs. Only in that way can the FCC fulfill the second step of the Congressionally-established process, and go on to fulfill the objective of replacing those implicit subsidies.

The Public Notice wholly ignores the fundamental deficiency in the second step being taken by the FCC, and attempts to cure that failure by seeking comment only on how to use the FCC's theoretical cost calculation to decide how much support is needed. Ultimately, however, if the cost of providing universal service is not calculated accurately, how the insufficient amount made

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[3] To date, the costs produced by such models do not accurately replicate the costs of providing universal service due, in part, because the models develop costs based on a fictitious network design not representative of any deployed network and because of the inaccuracies of the underlying assumptions on the appropriate inputs.

available for support as a result is determined may avail little.

Rather than limiting the scope of this proceeding as the Public Notice attempts, the Commission needs to rethink its high-cost support methodology from the start, and adopt actual, booked costs as the basis on which to determine the cost of universal service. The Commission should then determine what revenues are being generated by the provision of universal service only (and not non-universal services like access and toll) on a geographically consistent manner (*e.g.*, cost and revenues both determined on a wire center basis). From there, the FCC could determine where support is needed and in what amounts.

The Commission Should be Particularly Focused on Rural Areas and Adopt a "Do No Harm" Approach

First, the SBC LECs support the principle that the high-cost support available today for rural areas should not be decreased for the foreseeable future. Rural areas undeniably receive the benefits of implicit subsidies in the form of local rates that are lower than they would be otherwise, and Congress clearly did not intent to diminish or otherwise harm the availability and affordability of quality local service that is enjoyed today. To ensure that universal service is preserved and advanced in those high-cost areas and, as submitted by the Ad Hoc Working Group, the Commission should adopt as a principle that a carrier should get no less support than under federally administered programs that pre-dated the 1996 Act, and that support should continue to offset intrastate costs in the same manner as is done under the FCC's Part 36 rules.

Rural customers and LECs serving them are especially vulnerable to a decline in high-cost funding. Relying on the continuation of discriminatory implicit subsidies (as the FCC's current

structure unlawfully does) is problematic and unsustainable for all LECs serving rural customers. Using a revenue benchmark that ignores actual revenues, that includes revenues from other telecommunications services, and that does both on an nationwide averaged basis, is guaranteed to provide insufficient funds to LECs that service rural customers.

Responsibility for Support for High-Cost Areas and Explicit For Universal Service Should Be Shared by Federal and State Regulators

Ameritech's *ex parte* of April 3, 1998, provides a summary of the shared responsibility that exists today for universal service and that should continue into the future. The SBC LECs do not believe that the 1996 Act was intended to shift that shared responsibility totally to the Commission and a federal fund. Indeed, given that State commissions have jurisdiction over local and other intrastate rates that both benefit from and generate implicit subsidies, the State commissions are unquestionably involved with universal service and cannot be relieved of their responsibilities by a large federal fund. Again, however, section 254 affords no basis for the FCC to provide less support than before the 1996 Act, and the Commission should not seek to decrease the interstate support currently identified and provided to meet an arbitrarily-selected 25% funding responsibility (especially when based on a forward-looking cost model).

The Funding Basis Should Remain Interstate Retail Revenues Only

The SBC LECs agree with commenters like the Ad Hoc Working Group that urge the Commission to retain interstate retail revenues as a funding base, and disagree with those that would expand the funding base to include both interstate and intrastate revenues.[4] In light of the

[4] *See, e.g.*, BellSouth, GTE, Sprint, John Staurlakis, and U S WEST.

jurisdictional questions and disputes that have arisen with the use of a base that includes intrastate retail revenues,[5] the Commission should decide to stick with interstate revenues. Moreover, given the responsibility that State commissions will continue to have for universal service, excluding intrastate revenues from the interstate funding base will provide State commissions greater flexibility in choosing their intrastate funding bases without concerns about "double burdening" purchasers of intrastate services.

The Commission Must Not Delay Universal Service Reform Any Longer, and Must Reject AT&T's Unlawful and Factually Unsupported Suggestion

Among the specific items placed in the Public Notice was a ludicrous suggestion by AT&T that the FCC further delay universal service reform by denying any support to "major incumbent LECs" "at the very least until these companies have opened their markets to robust and widespread local competition." Adoption of such an suggestion would directly contravene section 254 and is factually insupportable.

Assuming AT&T's suggestion could be lawfully adopted -- and it could not -- the factual predicate nakedly alleged by AT&T is simply false. In particular, the SBC LECs have not "repudiated" the 1996 Act. To the contrary, the SBC LECs have constantly reaffirmed with their actions their commitment to the obligations under section 251 and 252 and to enabling local

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[5] *See, e.g., MCI Telecommunications Corp. Petition for Declaratory Ruling that Carriers May Assess Interstate Customers an Interstate Universal Service Charge Which is Based on Total Revenues*, CC Docket No. 96-45.

competition in general.[6] Since the 1996 Act became effective, the SBC LECs have in the aggregated signed more than 220 interconnection and resale agreements under section 252 that have been approved by State commissions (and are currently negotiating more than 400 additional agreements), and have spent more than $1 billion and devoted more than 3,300 employees to implement the 1996 Act and open local markets to competition. The result – with more than 175 operational competitive local carriers passing orders to the SBC LECs for interconnection, resale, and unbundled network elements -- is that the SBC LECs have lost approximately 903,000 access lines through the end of March 1998. All of those on-going activities and corresponding competitive losses demonstrate conclusively that the SBC LECs have fully opened their local markets. Instead, if anyone can be said to have "repudiated" the 1996 Act, it is AT&T with its delaying actions and lack of commitment to providing local service. Notwithstanding AT&T's perpetual complaining about its own inabilities (invariably blamed on incumbent LECs and particularly Bell Operating Companies, and intended to mask its obvious strategy of attempting to prevent BOC interLATA entry), multiple carriers are providing local telephone service on both resale and facilities bases in real competition with the SBC LECs.

In any event, sections 254 and 214 do not, either expressly or impliedly, condition universal service support on the implementation of sections 251 and 252. Congress instead created a separate set of provisions to establish and address a new universal structure that provides for explicit support. Notably, unlike the "quid pro quo" linkage created between section 271 and implementation of

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[6] The SBC LECs specifically deny any agreement on the "Special Provisions Concerning Bell Operating Companies."

sections 251 and 252 for BOCs, Congress did not similarly link section 254. Principles of statutory interpretation by themselves require rejection of AT&T's attempt to create such a linkage.

Moreover, Congress created an entirely different category of carrier for universal service purposes -- an "eligible telecommunications carrier" -- that was not conditioned on the carrier being an incumbent LEC or, one step further, to compliance with sections 251/252. To qualify, a carrier has to meet certain qualifications that demonstrate an ability and willingness to provide universal service. Again notably, those criteria have absolutely nothing to do with competition, and the designation of eligible carrier status is not conditioned on any competitive showing. This further indicates that Congress did not link the new universal service structure with sections 251/252 but rather sought to divorce the concept of universal service from the requirements or effects of competition.

In fact, conditioning universal service support on 251/252 compliance would violate the FCC's own interpretation of section 214(e). In the Universal Service Order, the FCC declared that neither it nor any State commission had any ability to impose additional criteria, requirements, or conditions on the designation of eligible carriers. Universal Service Order, ¶ 135. AT&T's suggestion is just such a prohibited condition.[7]

Further, the fundamental purpose of universal service is to ensure the availability of quality

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[7] The SBC LECs have appealed that interpretation as erroneous. If the Fifth Circuit agrees and vacates the FCC's interpretation, conditions such as proposed by AT&T still would not be lawful inasmuch as those conditions are punitive in nature and irrelevant to the provision of quality universal service at just, reasonable, and affordable rates. *See, for example*, 47 U.S.C. § 253(b) ("ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service").

"universal service" at just, reasonable, and affordable rates. Denying eligible telecommunications carriers support due to irrelevant (and baseless) allegations totally contravenes the entire purpose of universal service and sections 254 and 214. Without the needed support to offset high costs, the Congressional goal long pursued by the Commission would be placed in jeopardy.

Especially egregious is AT&T's call to the FCC "that $114 million of [Universal Service Funding] support targeted for the Major LECs be withheld." In doing so, AT&T essentially asks that the Commission punish the "Major LECs" based upon the wispiest of allegations. Even if the allegations could be factually supported (which they could not), the FCC's rules do not permit for

such a linkage, section 254 does not make or authorize such a linkage, and the FCC is otherwise without the legal authority to levy such a large forfeiture.

Finally, AT&T ignores the fact that universal service funding will not be a windfall to any incumbent LEC. The FCC has made clear that any funding received will be offset by rate reductions elsewhere.

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May 15, 1998

CERTIFICATE OF SERVICE

I, Mary Ann Morris, hereby certify that the foregoing, "COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY, PACIFIC BELL, AND NEVADA BELL ON ALTERNATIVE METHODOLOGIES," in CC Docket Nos. 96-45 and 97-160 have been filed this 15TH day of May, 1998 to the Parties of Record.

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